

# 801 CMR 1.00 et seq: Standard Adjudicatory Rules of Practice & Procedure

## **Section 1.05: SUPPLEMENTARY RULES APPLICABLE TO ADJUDICATORY PROCEEDINGS PURSUANT TO G.L. c. 32, § 16(4)**

### **(1) Applicability**

These Supplementary Rules apply to practice before the Division of Administrative Law Appeals (the “Division”) in all matters brought pursuant to G. L. c. 32, § 16(4). These rules are intended to supplement the Standard Adjudicatory Rules of Practice and Procedure found in 801 Code Mass. Regs § 1.01 et seq.

The Chief Administrative Magistrate, in the interests of justice and after due notice to parties, may waive or modify the application of these rules in a particular case. In any matter in which these rules do not specifically apply, the Chief Administrative Magistrate may exercise discretion so as to achieve a just, speedy, and fair determination of the issue.

### **(2) Electronic submissions**

Electronic submissions in searchable “.pdf” or MS Word format are encouraged in addition to, but not in place of, paper submissions and may be ordered by the Presiding Officer with regard to any particular matter in any adjudication. An electronic submission does not satisfy any of the filing or service requirements of G.L. c. 32, § 16(4), 801 Code Mass. Regs § 1.01 et seq. or these Supplementary Rules, except that (1) a party making such an electronic submission need file only one paper copy of the submission with the Division and (2) the parties, by written agreement, may agree to serve each other electronically communications or other papers required to be served under the rules applicable to an adjudication.

### **(3) Filing a Claim for Appeal**

#### **a. Manner, Time, and Place of Filing of Notice of Appeal**

An appeal of any action as provided for in G.L. c. 32, § 16(4) may be commenced by filing a written notice of appeal with the Contributory Retirement Appeal Board or the Division. The notice of appeal must be postmarked no later than fifteen days after (a) notification of the action or decision of the retirement board or the Public Employee Retirement Administration Commission from which the appeal is being taken; (b) the expiration of the time specified in G.L. c. 32, §§ 1 – 28, inclusive, within which a board or the commission must act upon a written

request to take an action; or (c) the expiration of one month following the date of filing a written request with the board or the commission to take an action if no time for action thereon is specified in Chapter 32. A copy of the notice of appeal simultaneously shall be served by mail on all other parties.

b. Content of Notice of Appeal

A notice of appeal shall (i) state the date of the decision from which the appeal is being taken; (ii) be accompanied by a copy of the decision from which the appeal is being taken. In those instances in which the appeal is taken from a failure to act by a retirement board or the Public Employee Retirement Administration Commission, the petitioner/appellant shall provide a short statement of the circumstances giving rise to the appeal.

c. Supplementation With a Statement of Claim

Within thirty days following the date of the notice of appeal, the petitioner/appellant shall supplement the notice of appeal by filing and serving on each other party a statement of claim containing (a) a statement of the relevant facts that are the basis of the petitioner/appellant's claim, and (b) a summary of the petitioner/appellant's understanding of the legal basis for the claim. The facts should be set out in separate numbered paragraphs.

d. Response to the Statement of Claim

Within thirty days following service of the statement of claim, any party opposing the appeal shall file and serve on each other party a response to the statement of claim, which response shall include (a) a response to each paragraph of the petitioner/appellant's statement of relevant facts, stating whether the respondent admits or disputes the stated fact, and (b) the respondent's summary of the legal basis for its position that the petitioner/appellant is not entitled to the benefit sought. In the event a respondent disputes a stated fact, it shall state the basis of the dispute. Any respondent may also submit a statement of additional relevant facts it believes establish that the petitioner/appellant is not entitled to the benefits he or she is seeking.

**(4) Summary Decision**

a. When Summary Decision is Permitted

If at any time the pleadings, exhibits, depositions, answers to interrogatories, admissions, affidavits and/or other evidence that have been made part of the record establish that there is no genuine issue as to any material fact and that one of the parties is entitled to a final decision in its favor as a matter of law, the presiding officer shall enter a summary decision without an evidentiary hearing. A summary decision interlocutory in character may be made on any

issue although there is a genuine controversy as to other issues. Summary decision, when appropriate, may be made against a moving party. A summary decision that resolves the whole case or grants or denies all the relief requested shall be subject to 801 CMR 1.01(11).

b. Motions for Summary Decision

At any time following the filing of the response to the statement of claim, any party may move with or without supporting affidavits for a summary decision in the moving party's favor upon all or any of the issues that are the subject of the adjudicatory appeal. The Presiding Officer shall not act on any motion for summary decision until at least 21 days after filing. During this time, parties opposed to the motion may file opposing memoranda, affidavits and other materials supporting their opposition.

Motions for summary decision shall include a concise statement of the material facts of record as to which the moving party contends there is no genuine issue to be tried, with page references to affidavits, depositions and other documentation. Failure to include such a statement constitutes grounds for denial of the motion. Opposition to motions for summary decision shall include a concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation. Copies of all referenced documentation shall be filed as exhibits to the motion or opposition. Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible under the adjudicatory rules of practice and procedure, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The Presiding Officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits, provided that motions made pursuant to 801 CMR 1.01(7)(h) shall be granted or denied solely on the basis of evidence admissible under the adjudicatory rules of practice and procedure.

When a motion for summary decision is made and supported as provided for herein, a party opposing the motion may not rest upon the mere allegations or denials of said party's pleading, but must respond, by affidavits or as otherwise provided herein, setting forth specific facts showing that there is a genuine issue for hearing on the merits. If a party does not respond, summary decision, if appropriate, shall be entered against the party. Should it appear from the affidavits of a party opposing the motion that the party cannot, for good reason,

present by affidavit facts essential to justify opposition to the motion, the Presiding Officer may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other orders as is just.

c. Orders to Show That There is a Genuine Issue of Fact  
Requiring an Evidentiary Hearing

In the event that the Presiding Officer concludes that, based on the statement of claim, the response to the statement of claim and/or other materials in the record, it is likely that there is no genuine issue as to any material fact and that one or more of the parties is entitled to a final decision in its favor as a matter of law, he or she may require the parties to establish that there is a genuine issue of fact requiring an evidentiary hearing. The Presiding Officer's orders may include, but are not limited to, (a) a requirement that one or more of the parties submit a statement of the material facts that are the basis of that party's claims or defenses, along with references to affidavits, depositions and other documentation setting forth the evidentiary basis for the asserted facts; (b) a requirement that each party submit a response to each paragraph of the opposing party's statement of relevant facts, stating whether the respondent admits or disputes the stated fact, and, if the party disputes the stated fact, including references to affidavits, depositions and other documentation setting forth the evidentiary basis for the asserted dispute; and (c) a requirement that each party submit a summary of the legal basis for its position in the proceeding. Failure to respond as ordered may result in judgment being entered against a party. Copies of all referenced documentation shall be filed as exhibits to a party's submission. Material facts of record set forth in the statement required to be served by any party will be deemed to be admitted by opposing parties for purposes of the proceeding unless controverted by the statements required to be served in response by those parties.